IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 1171 OF 2007

Sai Co-operative Housing sty ltd..... Petitioner

versus

Dattatray Shantaram Zunjarrao..... Respondent.

Mr. M.D. Angal i/b Ms. Rukmini Thokal for the petitioner
Mr. N.M.Ganguli for the respondent.

WITH

WRIT PETITION NO. 1616 OF 2007

Dattatraya S. Zunjarrao .... Petitioner.

versus

Sai Co-operative Hsg, Sty.Ltd... Respondent

Shri N.M.Ganguli forthe petitioner
Shri M.D. Angal for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 15TH OCTOBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. Writ Petition No. 1171/07 is filed by the society challenging the order passed by the Co-operative

Appellate Court dated 21-12-2006 whereas the same order is challenged by the respondent/member of the society. The society instituted a dispute against the respondent for recovery of an amount of Rs.6,92,000/- as per the particulars given in the dispute. There is no other substantive prayer made in the dispute. Whereas ad-interim relief in the nature of mandatory injunction to close the windows and the doors on the northern and southern wall of flat no.7 are made. Similarly, an interim prayer in the nature of mandatory injunction to remove the flooring and the unauthorised structure is also made. The trial court rejected the prayer for interim relief claimed by the present petitioner society, pending adjudication of the dispute. Aggrieved thereby the society filed an appeal before the Co-operative Appellate Court. The Co-operative Appellate Court has not dealt with the matter on merit but has disposed of the appeal placing reliance on a statement made by the counsel for the respondent member that there is no need to issue mandatory injunction for removal of the flooring and that the member will authorise the society to remove the flooring. The actual statement made by the advocate is to be found immediately after the points are answered and in the reasons recorded. The statement reads that the respondent has not constructed the flooring which is in existence, but

the same was constructed by the builder. It is further stated that the un-authorised structure which was constructed has already been demolished and not in existence. At that stage, the counsel for the society is said to have raised a new point during the course of argument, that during pendency of the dispute and the appeal, new illegal structure on the same site has been raised and the same requires to be demoloished. The said submission has been rejected by the Appellate Court immediately in the next paragraph. The statement allegedly made by the counsel for the respondent does not appear to have been properly recorded by the court. The recording of the statement in the earlier paragraph of the reasons and the statement finding place in the concluding paragraph are at variance. Be it as it may, as pointed out hereinabove, there is no substantive prayer made claiming mandatory injunction in the nature of removal of the structure. Ordinarily mandatory injunction cannot be granted at the interlocatory stage, and more so when no substantive relief for that purpose is claimed. At this stage both the advocates for the respective parties are in agreement that the impugned order passed by the Maharashtra State Co-operative Appellate Court, Bombay be quashed and set aside and the Co-operative Court be directed to dispose of the Dispute as expeditiously as possible. The learned

counsel for the petitioner society has also sought liberty to move an appropriate application before the co-operative Court with a view to amend the prayer clauses in the dispute for claiming mandatory injunction by way of a substantive prayer. Both the learned advocates are in agreement for disposal of the writ petition in the said terms. In the result W.P. No. 1616/07 is allowed and the impugned order passed by the Appellate Court dated 21-12-2006 is quashed and set aside. Whereas W.P. No.1171/07 stands disposed of by granting liberty to the petitioner society to make appropriate application seeking amendment of the dispute and by directing the Co-operative Court to dispose of the dispute as expeditiously as possible and hopefully within a period of six months from today. Rule made absolute in the above terms.

...